IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 23RD JULY 2007 / 1ST SRAVANA 1929

CRP.No. 1015 of 2001(F)

(AGAINST THE ORDER DATED 30/12/2000 MADE IN TLB.19/1990/KNR ON THE FILE OF THE TALUK LAND BOARD, KANNUR – ORDER RECEIVED ON 2/04/2001)

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PETITIONERS:

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1. **SRI. P.BALAKRISHNAN MANIYANI, S/O.KELU MANIYANI, MULIYAR, PERDALA VILLAGE, HOSDURG TALUK, KASARAGOD DIST.**

2. **SMT.M.YAMUNA, D/O.MALINGA MANIYANI, MULIYAR, PERDALA VILLAGE, HOSDURG TALUK, KASARAGOD DIST.**

3. **KELU MANIYANI, S/O.CHOYI MANIYANI MULIYAR, PERDALA VILLAGE, HOSDURG TALUK, KASARAGOD DIST.**

BY ADV. SRI..A.K.JAYASANKAR NAMBIAR

RESPONDENTS:

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1. **STATE OF KERALA, REPRESENTED BY THE SECRETARY TO THE GOVERNMENT, DEPARTMENT OF REVENUE, GOVERNMENT SECRETARIAT, TRIVANDRUM.**

2. **THE TALUK LAND BOARD, KANNUR DIST.**

3. **THE LAND TRIBUNAL, KANHANGAD, KASARAGOD DIST.**

BY GOVERNMENT PLEADER SRI. SHYSON P.MANGUZHA for R1 to R3

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 23/07/2007 ALONG WITH C.R.P.NO.1023 OF 2001, C.R.P.NO.1059 OF 2001 AND C.R.P.NO.1060 OF 2001, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

KSS

ORDER ON C.M.P.NO.2445/2001 IN C.R.P.NO.1015/2001 F

DISMISSED

23/07/2007 **SD/- PIUS C.KURIAKOSE, JUDGE**

/TRUE COPY/

P.A.TO JUDGE

KSS

PIUS C. KURIAKOSE,J.

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C.R.P.Nos.1015, 1023, 1059
& 1060 of 2001

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Dated: 23rd July, 2007

ORDER

These C.R.Ps. under Section 103 of the Land Reforms Act are directed against the order of the Taluk Land Board, Kannur dated 30.12.2000 disallowing claim petitions and directing the declarant to surrender a total extent of 71.42 acres of land including the lands covered by claim petitions. C.R.P.No.1060 of 2001 is filed by the legal representatives of K.P.Damodharan, the original declarant. The other C.R.Ps. are filed by claimants who claimed under Section 85(8) that they were cultivating tenants entitled to purchase jenmom rights under Section 72(2)(b) in respect of the lands covered by the respective claim petitions. According to the claimants, the lands held by them are not liable to be included in the ceiling account of the declarant. The Taluk Land Board by its order dated 4.3.1980 disallowed the claim petitions and directed the declarant to surrender 71.42 acres of land. The claimants filed C.R.P.No.1142/80 challenging the above order of the Taluk Land Board. This court allowed the C.R.P. and remanded the matter back to the Taluk Land Board for fresh consideration. This time also the Taluk Land Board disallowed

the claim petitions and directed surrender of 71.42 acres of land by the declarant. In the meanwhile, Section 85(9A) was incorporated in the Land Reforms Act and the declarant filed an application for review before the Land Board invoking Section 85(9A). Subsequently, the matter was transferred to Taluk Land Board, Kannur wherein it was renumbered as TLB No.19/90/KNR. The Taluk Land Board, Kannur as per the order dated 27.11.1991 reopened the case for fresh consideration. The order reopening the case has attained finality. In the meanwhile, the Land Tribunal, Kanhangad had allowed the purchase applications filed by the claimants for purchase of jenmom rights in respect of the lands claimed by them and the Government preferred appeals before the Land Reforms Appellate Authority against the order of the Land Tribunal. The Appellate Authority allowed the appeals and remanded the matter for fresh consideration after making the State as a party to the proceedings. The matter, it is submitted is pending before the Land Tribunal, Kanhangad. The Taluk Land Board however called for the report of the authorised officer and the authorised officer by his report dated 22.10.1996 submitted that claimants are cultivating tenants as regards the lands held by them and that those lands are liable to be deleted from the ceiling account

of the declarant. As regards 4 acres of land in survey No.26/1 of Belur Village and the land in R.S.No.77/1 and 77/2, he reported that those items are also liable to be deleted from the ceiling account of the declarant. The declarant filed an application to keep the proceedings in abeyance till the final decision is taken by the Land Tribunal in respect of the tenancy rights claimed by them. In spite of all that the Taluk Land Board, Kannur passed the impugned order dated 30.12.2000 virtually rejecting the claim petitions and directing the declarant to surrender 71.42 acres.

2. I have heard the submissions of Mr.M.Gopikrishnan Nambiar, counsel for the petitioner in C.R.P.No.1060 of 2001, Mr.A.M.Shaffique, counsel for the petitioner in C.R.P.No.1015 of 2001, Smt.Preethy Karunakaran, counsel for the petitioner in C.R.P.No.1059 of 2001 and those of Mr.T.Krishnanunni, counsel for the petitioner in C.R.P.No.1023 of 2001.

3. The arguments were piloted by Mr.T.Krishnanunni who addressed me in extenso. Copies of judgments in the previous C.R.Ps. were also placed before me by Mr.Unni so as to enable me to appreciate the submissions properly. Learned counsel submitted that a Purchase of Certificate issued to the Land Tribunal under Section

72K of the Land Reforms Act is binding on the Taluk Land Board and the Land Tribunal had allowed the purchase application submitted by the claimants and issued the Certificate of Purchase in their favour though the Land Reforms Appellate Authority has set aside the order of the Land Tribunal, the issue is even now at large before the Tribunal. The Authorised Officer's report is to the effect that the claimants are cultivating tenants in possession of the property from even prior to 1964 and being a statutory report the same is entitled for due weight. Counsel submitted that the order reopening the case under Section 85(9A) has attained finality and the entire issue was at large before the Land Tribunal, the Land Board is not at all justified in relying on the decision in C.R.P.No.1382/85 in disallowing the claim petitions filed by the petitioners. Once a reopening was made under Section 85(9A), the Land Board was bound to decide the case without reference to the previous order. The submissions of Mr.Unni were supported by the learned counsel appearing for the petitioners in other C.R.Ps. Mr.Unni's submissions were however strenuously resisted by the learned Government Pleader.

4. I do find merit in the Krishnanunni's submission that the order of reopening the case under Section 85(9A) having attained

finality, it was not proper on the part of the Land Board to have relied on its own earlier orders and the judgment of this court in C.R.P.No.1382/85 to reject the claims of the claimants and the contentions of the legal heirs of the original declarant. Moreover I find that the implications of the amendments made to Section 84 of the Land Reforms Act and the new Section 7E introduced by Act 21 of 2006 will also have to be considered.

5. Accordingly, I set aside the impugned order and direct the Taluk Land Board to issue notice to all concerned parties, the petitioners in all the C.R.Ps. and anybody else who may be affected and take a fresh decision on merits at the earliest and without being influenced by the order of this court in C.R.P.No.1382/85 and any other earlier order passed by the Taluk Land Board in this ceiling case.

The C.R.Ps. are disposed of as above. No costs.

srd **PIUS C.KURIAKOSE, JUDGE**